



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

January 17, 2012

MR. JASON SMATHERS
MUCKROCK
NUMBER 3
185 BEACON STREET
SOMERVILLE, MA 02143

FOIPA Request No.: 1171519- 000
Subject: PRATT, ELMER

Dear Mr. Smathers:

This is in reference to your Freedom of Information-Privacy Acts (FOIPA) request.

We have located approximately 3,307 pages which are potentially responsive to your request. Pursuant to the U.S. Department of Justice (DOJ) regulations, 28 C.F.R. §§ 16.11 and 16.49, there is a duplication fee of ten cents per page if you receive a paper copy. Releases are also available on CD upon request. Each CD contains approximately 500 pages per release. The 500 page estimate is based on our business practice of processing medium and large track cases through interim releases that generally equal approximately 500 pages. The first 100 pages of duplication, or the cost equivalent (\$10.00) for releases on CD, will be provided to you at no charge. In accordance with the DOJ regulations, the FBI notifies requesters when anticipated fees exceed \$25.00. If all of the pages that are potentially responsive to your request are released, you will owe \$320.70 in duplication fees to receive a paper copy or \$95.00 (7 CD's at \$15.00 less \$10.00) to receive the release on a CD. Please remember this is only an estimate, and if some of the pages are withheld in full pursuant to FOIA/Privacy Act exemption(s) or are determined to not be responsive to your request, the actual charges could be less.

To accelerate the processing of your request, you may wish to consider reducing the scope of your request so that it will fall within one of the smaller queues. This may allow you to lower your search and duplication costs and hasten the receipt of your information. The FBI uses a three-queue system as a way to fairly assign and process new requests. The placement of a request in one of the three queues depends on the total number of pages responsive to that request - 500 pages or less (small queue), 501 pages to 2500 pages (medium queue), or more than 2500 pages (large queue). The small queue has the fastest rate of processing. Please let us know in writing if you are interested in discussing the possibility of reducing the scope of your request, as well as your willingness to pay the estimated search and duplication costs indicated in the above paragraph. Your written response should provide a telephone number where you can be reached between the hours of 8:00 a.m. and 5:00 p.m., EST, if one is available. Please send this response to: Work Process Unit, Record Information/Dissemination Section, Records Management Division, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602. You may also fax your response to the following number: 540-868-4997, Attention: Work Process Unit.

No payment is required at this time. However, you must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD) and your commitment to pay the estimated fee. If we do not receive your commitment to pay within thirty (30) days of the date of this notification, your request will be closed. Please include the FOIPA Request Number listed above in any communication regarding this matter.

Sincerely yours,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division



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Dear Mr. Smathers:

This is in response to your request for a fee waiver for the above referenced Freedom of Information-Privacy Acts (FOIPA) request. Requests for fee waivers are determined on a case by case basis. See 5 U.S.C. § 552 (a)(4)(A)(iii).

In order to be granted a fee waiver or a reduction in fees, two requirements must be satisfied. First, it must be established that "disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." Second, it must be established that "disclosure of the information . . . is not primarily in the commercial interest of the requester." See 5 U.S.C. § 552(a)(4)(A)(iii). The burden is on the requester to show the statutory requirements for a fee waiver have been met. Where one or both of these requirements has not been satisfied, a fee waiver is not warranted under the statute.

To determine whether the first requirement has been met, we consider the following four factors: (1) whether the subject of the requested records concerns "the operations or activities of the government;" (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to "public understanding;" and (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. See 28 C.F.R. § 16.11(k)(2).

If the first requirement has been met, we are then required to determine whether disclosure of the requested information is primarily in the commercial interest of the requester. To make this determination, we consider the following two factors: (1) whether the requester has a commercial interest that would be furthered by the requested disclosure and (2) whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." See 28 C.F.R. § 16.11(k)(3). If the requester's commercial interest in disclosure is greater than the public interest to be served, then a fee waiver is not warranted.

We have reviewed the information that you provided in support of your request for a fee waiver and have found that you do not satisfy either requirement. Quoting or paraphrasing the statute, without also providing factual detail or support specific to your request, is not sufficient under the law. Consequently, your request is denied.

You may appeal this denial by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C., 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request to facilitate its identification.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division